

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

TIFFANY W.,

Petitioner,

v.

THE SUPERIOR COURT OF  
ALAMEDA,

Respondent.

ALAMEDA COUNTY SOCIAL  
SERVICES BUREAU, et al.

Real Parties in Interest.

A135384

(Alameda County  
Super. Ct. No. OJ8010386A,  
OJ901382A)

Tiffany W., the mother of T.W., S.T., and M.T., petitions under California Rules of Court, rule 8.452 to vacate the juvenile court's order that terminated her reunification services and set a hearing under Welfare and Institutions Code section 366.26.<sup>1</sup> Mother contends the court erred when it found returning S.T. and M.T. to her custody would risk their physical or emotional detriment and that reasonable reunification services had been provided to her. She also contends the court abused its discretion when it allowed the Alameda County Social Services Agency (the Agency) to determine whether she could visit with her children after reunification services were terminated. We deny the petition on its merits.

---

<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

## **BACKGROUND**

In *In re M.T./Alameda County Social Services Agency v. S.T.* (A129097, Aug. 9, 2011), we ruled against S.T. and M.T.'s father to affirm an order establishing dependency jurisdiction over the children. Our opinion in Case No. A129097 describes the circumstances of the initial removal of S.T. and T.W. from Mother's home in 2008, M.T.'s birth, the subsequent removal of all three children in 2009, and the combined jurisdiction/disposition hearing. The background discussion in that opinion is incorporated here by reference.

In May 2010 the court first declared M.T. to be a dependent child, continued dependency as to S.T. and T.W., and continued their foster care placement. Mother was ordered to participate in all aspects of her case plan. Following a contested 12-month review hearing, on December 9, 2010 the court found reasonable services had been provided and that mother had made partial progress toward alleviating the reasons for the children's out-of-home placement. Mother's reunification services were continued and review hearings were scheduled for February and April 2011.

The Agency's report for the February 2011 review hearing recommended maintaining the status quo until the hearing in April. Mother was visiting the children every week. The visits went well, and in January the Agency authorized unsupervised visits. Mother was looking for new housing and trying to get the carpeting and window screens in her apartment replaced. S.T. and T.W. had been referred for individual therapy. The court continued all prior orders in effect until April.

The Agency's recommendation for the April hearing was legal guardianship with the children's foster mother. The children were adoptable, but the Agency felt adoption was inappropriate because Mother had regular contact with them and they would benefit from a continued relationship with her. The foster mother was committed to becoming the legal guardian for all three children if reunification efforts failed, and the children had bonded with her.

T.W. was still reporting that Father pushed him out of a window in November 2009, and Mother continued to deny it. She had assured her social worker that she had

ended her relationship with Father. The Agency was advocating with Mother's landlord to upgrade her apartment or move the family into another unit, while also helping her pursue Section 8 housing.

By late March 2011, Mother was attending weekly therapy sessions and was addressing her various issues, although she missed four appointments. She had weekly two-hour visits with the children supervised by family therapist Natasha Marshall. The visits were going well, although S.T. and T.W. were very active, energetic boys, and could be very difficult to manage. Marshall was helping Mother to set limits, implement time-outs when the children misbehaved, and reinforce good behavior. Mother had difficulty setting limits and controlling the children, but was making good progress. Mother also had two-hour supervised visits with the children on Saturdays, although some of those visits were canceled.

The children were continuing to do reasonably well in their foster home. S.T. and T.W. shared a bedroom at first. But after some inappropriate touching between the boys, the foster mother moved them to separate bedrooms, bathed them separately, and was teaching them about personal boundaries. T.W. could also be physically aggressive with his younger siblings when he thought no one was looking. S.T. frequently wet his bed and required constant redirection, but was "not redirectable when [T.W.] is around." Although his therapist recommended that he be assessed for ADHD, he was too young for a formal assessment.

Social worker Leslie Calhoun was assigned to Mother's case in January 2011. She helped Mother apply for Section 8 housing, obtained Agency funding for a deposit on a new apartment, provided Mother referrals for family therapy and therapeutic visitation, consulted with Mother's family and individual therapists, facilitated Mother's visits, provided BART tickets and bus passes, and provided Mother with in-person and over-the-phone case plan support. Mother received a very limited income from food stamps, braiding hair, and recycling cans. Her father (Grandfather) also helped pay family expenses from his social security income.

Starting in February 2011, family preservation worker Yi Cheng provided mother intensive, weekly, in-person case plan support. The service plan included helping Mother with her housing needs, coordinating with the multiple therapists and other service providers, developing a plan to address the children's safety needs and maintain appropriate boundaries with Father, and supporting Mother with transitional services in the event of reunification, such as school enrollment, childcare, medical care, and a Calworks application. Cheng met with Mother, made home visits, and consulted with the family therapist and the individual therapists for Mother and the two older children. She also maintained contact with the foster agency social worker. Cheng and Calhoun both worked with other service providers to assess and provide whatever services were needed for Mother to maintain a safe and suitable home for the children.

In May 2011, with help from the Agency, Mother moved into Section 8 housing with Grandfather. Cheng continued to provide Mother guidance on housekeeping and safety issues. Mother was cautioned to keep Father away from the home, to get rid of a pit bull terrier she had acquired, and to stop driving until she obtained a driver's license.

The 18-month hearing was held over eight days between June 2011 and April 2012. The children's safety was the primary focus of the Agency's concern. Cheng reported in July 2011 that Mother's parenting skills were limited and she was struggling to meet all three children's needs. But, Cheng believed that "as long as the mother continues to participate in her case plan, follow up with the safety plan and maintain an appropriate boundary with [Father], it is possible that she will be able to provide basic care to meet the minors' needs. Support from Family Preservation and community service providers together with well planned steps of returning children are needed, along with the mother's cooperation."

On July 22, Mother was seen with Father even though she had repeatedly told Agency representatives that she had no contact with him. Mother insisted that Father merely gave her a ride to court and that she was not seeing him, but Cheng and Calhoun were concerned that she was not telling the truth. As a result, Mother agreed in writing to prevent contact between Father and the children.

Mother also apparently lied to the Agency about the dog. Calhoun had explained to Mother that having a pit bull in her home would contribute to the unsanitary and unhealthy living conditions that were one reason for the children's removal. In addition, the Agency considered a pit bull a safety hazard and, indeed, a pit bull Mother illicitly kept in her prior apartment had attacked a maintenance worker. Keeping a dog could also jeopardize Mother's Section 8 housing. Nonetheless, Mother repeatedly lied to the Agency about the dog and did not find another home for it until August 2011, after numerous promptings.

In September 2011, T.W. was returned to Mother's custody and S.T. and M.T. were approved for overnight visits with a two-week trial in Mother's home. The Agency provided Mother with information about schools for T.W. and arranged for S.T. to enroll in a therapeutic preschool.

Unfortunately, the two-week trial did not go well. After his first overnight visit, S.T. started wetting himself during the day and his therapist attributed his behavior to anxiety. Because of T.W.'s sexually inappropriate behavior with S.T., his therapist warned that he should be carefully watched and not share a room with his little brother. This was explained to Mother repeatedly, but she was unconcerned about their sexual touching and allowed the boys to share a bedroom.

The social workers observed other safety concerns as well. At an unannounced home visit on September 27 Mother had left a gate open onto a busy major street, although the social worker had previously seen S.T. dart outside and stressed to Mother the importance of keeping the gate securely closed. Mother and Grandfather had promised to keep the house smoke-free, but grandfather's room smelled of smoke. Mother was unable to consistently supervise all three children. The home environment was chaotic, stressful, and often unsafe. S.T. was exhibiting aggressive and defiant behaviors at his preschool in response to limit setting. M.T. had frequent temper tantrums and appeared nervous and on edge in Mother's home. As Cheng described the dynamic, "[e]ach of the minors requires the mother's close attention at all times, and the mother gets tired and exhausted by constantly telling them to stop or had to physically

help her children do or not do certain things. It is the undersigned's assessment that the mother's parenting skills are not able to match her children's high demanding needs, which appears to be directly impacted by the quality of the home environment, such as the unlocked gate, loud TV often on, the minors' fighting over which TV channels to watch, crying over toys, or being mad [if] not getting their mother's attention immediately. The minors sometimes did not respond to the mother's interventions saying 'no' to their mother. The mother was not able to more actively or effectively monitor and parent all three at the same time."

On September 30, 2011, the court terminated the in-home trial for S.T. and M.T. and discontinued overnight visits. Subsequent addendum reports and testimony at subsequent hearings from October until April 2011 evidenced some improvements in Mother's home, but serious safety concerns persisted. In November 2011, Mother admitted to Cheng that she had not given S.T. his ADHD medication during the extended visit. Instead, Grandfather gave S.T. coffee if he was "too out of control." Mother said the Agency had not given her S.T.'s medication, but Calhoun and the foster mother contradicted this. Mother had not installed locks on her second floor windows as she had been asked to do. The previous tenants left broken furniture in the backyard where the children played, but Mother did not remove it until October despite repeated reminders and offers of help from the Agency. The home environment was much safer, calmer, and more manageable after S.T. and M.T. were returned to their foster placement, and Mother was doing a better job of keeping the home clean, and safe.

When the children first visited Mother's new home in the spring of 2011 the foster family agency worker thought she saw Father in front of the duplex. In January 2012, T.W. told a family maintenance worker that Father had been visiting, would smoke upstairs with Mother, and was there for Christmas. Mother had instructed T.W. " 'not to talk about him or I'll get in trouble.' " Grandfather said that Father sometimes came by, but that he never went beyond the front gate. Mother denied that she had any contact with Father and said she did not think he knew her new address. She still disbelieved that Father pushed T.W. from a window or did anything inappropriate with the children.

By the beginning of 2012 Mother's ability to care for the children was slowly improving, but she still required a significant amount of support and cuing. Neither Cheng nor Calhoun believed Mother was equipped to care for all three children. Mother steadfastly denied that Father had been visiting her home (and said that T.W. lied about it) until April, when she testified that she had come around to believing Father had pushed T.W. out of the window.

The 18-month review concluded on April 20, 2012 after extensive testimony from Cheng, Calhoun, Mother, and Grandfather. The court found that reasonable services had been provided, that Mother had not made substantial progress on her case plan or alleviated the causes that necessitated out-of-home placement, and that returning M.T. and S.T. to her care would create a substantial risk of detriment to their safety, protection or well-being. The court therefore terminated reunification services and set a section 366.26 hearing. Mother filed this timely writ petition.

## **DISCUSSION**

The juvenile court must return the child to his or her parent at an 18-month permanency review hearing unless it finds by a preponderance of the evidence that returning the child would create a substantial risk of detriment to his or her safety, protection, or physical or emotional well-being. (§ 366.22.) Generally, if the child is not returned the court must set a section 366.26 hearing to select a permanent plan of adoption, guardianship or long-term foster care. (§ 366.22, subd. (a).) We review the juvenile court's ruling for substantial evidence. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705.)

### ***I. Substantial Risk of Detriment***

Our review of the record satisfies us that the juvenile court properly found that returning S.T. and M.T. to Mother's care would create a substantial risk of physical and emotional detriment. The critical question is whether Mother had sufficiently changed so that the children could be safely returned to her home. Substantial evidence supports the court's conclusion that she had not.

The problems that led to Mother's loss of custody included her failure to protect T.W. from Father and to provide a safe and sanitary home for her children. Despite jurisdictional findings that he inflicted serious abuse, Mother ignored orders to keep Father away from the children and seemingly lied to the Agency about his presence. This was one of the primary reasons supporting the court's finding that the children could not safely be returned to Mother's care and custody. "The issue is to me what is the substantial risk of returning the children back home now, and the substantial risk to me lies in the fact that despite all of the recommendations that mom has been given over time, she just decided that she's going to do what she wants to do and how she wants to do it. [¶] [T.W.] has said '[Father] threw me out of the window and I got died [sic].' This little guy is very clear, and he has said all the time that [Father] pushed him out of the window, and so it was ordered that [Father] not be around this child and now he is around a lot. [¶] Although mom said, 'Oh, no, [Father] is not here' [T.W.] countered by saying, 'No, he is here all the time. He was here Christmas and he and mom go upstairs and smoke.' . . . [Grandfather] wanted to duck the question and he just really wanted to talk about, oh, what a good guy [Father] is and that he's really not that bad. But the point is mom didn't take that recommendation seriously." On this basis alone, the court's decision that the children could not safely be returned was reasonable.

But there was other evidence that Mother was unable to provide the children a safe environment. Mother acquired a pit bull terrier (and, again, apparently lied about it) despite the Agency's warnings that the dog was a health and safety hazard and endangered her Section 8 housing. Of more concern was Mother's failure, after repeated instructions, to appropriately address T.W.'s sexual activity with his younger brother. Mother argues the boys' sexual activity was an invalid consideration because it was unrelated to the original basis for dependency. We disagree. One of the reasons the children were removed from Mother was her failure to provide them a safe living environment. The court appropriately considered her neglect of the Agency's recommendations, which included housing the boys in separate bedrooms, when it considered whether the boys could safely be returned to her.



There were also substantial safety concerns arising from Mother's limited ability to control these three very active and demanding young children. For example, Mother sometimes left the exterior door and gate unlocked, although the children could (and at least once did) run outside to the busy street; failed to remove hazardous broken furniture from the yard where the children played, even after repeated reminders and offers of assistance; may have driven the children while she did not have a driver's license; and withheld S.T.'s ADHD medication, while lying that the Agency had not provided it to her.

Mother argues that the fact that T.W. was returned to her in September 2011 is proof that she successfully addressed the safety concerns that lead to S.T. and M.T.'s dependency. We disagree. The younger children's extended trial visit was terminated because Mother was unable to cope with the challenges of caring for all three children and keeping them safe. But as the trial court noted, "a mother . . . is going to be infinitely more likely to control one child better than three." The court's observation is particularly cogent in light of Mother's inability to protect S.T. from T.W.'s aggressive behavior and sexual touching.

Mother argues that she was in substantial compliance with her safety plan by April 2012, and testified that she would remain so. The accuracy of her assertion is questionable in light of the juvenile court's finding and the record. Mother repeatedly ignored safety-related court orders and Agency recommendations. She did not keep Father away from the children, house the boys in separate rooms, or keep her home safe and secure. But, in any event, compliance with the plan alone is not determinative where compliance has not rectified the conditions that led to the out-of-home placement. (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1139–1142.) While we commend Mother for her progress, substantial evidence, as explained above, supports the court's conclusion that returning the children to her care continued to present a risk of detriment.

## **II. Reasonable Services**

Mother contends the evidence fails to support the court's finding that reasonable services were provided to her. Specifically, she complains that S.T. did not begin

individual therapy until February 2011, that T.W.'s therapy, although it began earlier, was not sufficiently consistent, that the children were not given behavioral therapy at Mother's home, and that the Agency did not adequately involve her in the therapy the children received. She also maintains the Agency failed to tailor services to her intellectual limitations, did not offer enough in-home parenting support, failed to refer her to services specific to T.W.'s sexual behavior, and failed to adequately involve Grandfather in the reunification efforts. The contention is unpersuasive in light of the extensive services that the record demonstrates were provided to this family.

The standard is not whether the services provided were perfect or more services could have been provided, but whether the services were reasonable under the circumstances. (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) Here, despite Mother's specific complaints, she received over two years of varied and extensive interventions. Mother and both boys were provided with individual and family therapy. The Agency worked with Mother to remedy the health and safety issues in her original apartment and helped her obtain and maintain new Section 8 housing. She received therapeutic supervised visitation with the children, supervised visitation on weekends, transportation to visits and therapy sessions, case plan support from family preservation worker Cheng, and assistance enrolling S.T. in a therapeutic preschool during his extended trial visit. The court properly found that reasonable reunification services were provided.

### **III. Visitation Order**

The order terminating Mother's reunification services also directed the Agency to arrange for visitation "as frequently as possible consistent with the [children's] well-being." Mother argues that this order unlawfully delegates to the Agency the decision whether she will be allowed visitation. We will not address the substance of this claim because Mother did not raise it before the juvenile court. It is well settled that failure to object to a nonjurisdictional order in a dependency proceeding normally forfeits the issue on appeal. (See, e.g., *In re Christopher B.* (1996) 43 Cal.App.4th 551, 558; cf. *In re S.B.*

(2004) 32 Cal.4th 1287, 1293.) Although application of the forfeiture rule is not automatic, the appellate court’s “discretion to excuse forfeiture should be exercised rarely and only in cases presenting an important legal issue. [Citation.]” (*Id.* at p. 1292.) This discretion must be exercised with special care in dependency proceedings: “Because these proceedings involve the well-being of children, considerations such as permanency and stability are of paramount importance.” (*Ibid.*) This case raises no novel legal issues requiring appellate resolution, and therefore does not warrant the rare exercise of our discretion to excuse Mother’s forfeiture.

### **DISPOSITION**

The order to show cause is discharged, and the petition for extraordinary writ is denied on the merits. (See § 366.26, subd. (l); Cal. Rules of Court, rule 8.452(i); *In re Julie S.* (1996) 48 Cal.App.4th 988, 990–991.) Our decision is final immediately. (Cal. Rules of Court, rule 8.264(b).)

---

Siggins, J.

We concur:

---

Pollak, Acting P.J.

---

Jenkins, J.